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OFFICE OF PETITIONS

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600 CONGRESS AVE.
SUITE 2400
AUSTIN TX 78701

In re Patent No. 7,574,401
Issued: August 11, 2009
Application No. 09/603,510
Filed: June 26, 2000
Dkt. No.: UHGC:1104US/10813341

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
: :

This is a decision on the petition filed May 20, 2010 requesting that the patent term adjustment be increased from 1,327 days to 1,388 days.

The request for reconsideration of the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.**

The patent is entitled to an overall adjustment of 1,245 days.

The patent is entitled to an overall adjustment of 841 days pursuant to 37 CFR 1.703(a) (256 days under § 1.703(a)(1) + 585 days under § 1.703(a)(6)).

The patent is not entitled to 82 days of patent term adjustment in connection with the examiner's answer mailed June 28, 2005. In accordance with 37 CFR 1.703(a)(4), the patent is entitled to the number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 41.37 of this title was filed and ending on the date of mailing of any of an examiner's answer under § 41.39 of this title, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first. The appeal brief filed December 7, 2004 was held to be defective, as indicated in the Order mailed November 30, 2005 as well as the Office communication mailed December 8, 2005. The first compliant brief was filed December 5, 2005. The examiner's answer was filed within four months of the filing date of the compliant brief on February 9, 2006. Accordingly, the patent is not entitled to adjustment pursuant to 37 CFR 1.703(a)(4).

The patent is entitled to an overall adjustment of 123 days pursuant to 37 CFR 1.703(b). As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on June 27, 2003 and ends on October 27, 2003, the day before the RCE was filed, and not October 28, 2003,

the day of filing of the RCE. See, 35 U.S.C. 154(b)(1)(B)(i). Thus, the over 3 year period is 123 days.

However, the patent is not entitled to adjustment under 37 CFR 1.703(b) for the period of time beginning on the date that the Notice of Appeal was filed, August 28, 2003, and ending on the day before the date that the request for continued examination was filed on October 27, 2003, to wit, 61 days. See, 37 CFR 1.703(b)(4).

The patent is further entitled to an adjustment of 509 days pursuant to 37 CFR 1.703(e), from October 7, 2005 to February 27, 2007.

As acknowledged, the adjustment is properly reduced 167 days for applicant delays.

In view thereof, the patent is entitled to an overall adjustment of 1245 days (841 days under § 1.702(a) + 123 days under § 1.702(b) + 509 days under § 1.703(e) - 61 under § 703(b)(4) - 167 days of applicant delay under § 1.704)).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 1,245 days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,574,401

DATED : August 11, 2009

DRAFT

INVENTOR(S) : Burns

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1,327 days

Delete the phrase "by 1,327 days" and insert – by 1,245 days--